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RIDDLEY v. CLINCHFIELD COAL CORP.

Sept. 11, 1916.

[89 S. E. 926.]

1. Master and Servant (§ 276 (9), 279 (3)*)—Injuries to Servant—Actions—Evidence.—In a servant's action for injuries received while action as brakeman on a motor used in a coal mine, evidence held to warrant findings that the motorman was incompetent because of reckless operation, that it was known to the servant and the master that the proximate cause of the injury was the motorman's incompetency, and that the master had assured the servant that, if he would act as brakeman, the motorman would operate the motor slowly.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 951, 959, 975, 976; Dec. Dig. § 276 (9), 279 (3).* 9 Va.-W. Va. Enc. Dig. 725.]

2. Master and Servant (§ 289 (19)*)—Injuries to Servant—Assumption of Risk.—Plaintiff, a contractor engaged in mining coal, objected to the incompetency of a motorman in charge of motor used to haul cars out of a mine on the ground that the motorman recklessly operated the motor too fast. Being unable to secure any one to act as brakeman, plaintiff consented to act; the mine company's vice principal assuring him that the motorman would operate the motor slowly, and so directing the motorman. Held, that, notwithstanding plaintiff's knowledge of the motorman's recklessness, he did not assume the risk of injury resulting therefrom, as a matter of law, and the verdict could not be directed for defendant on that ground, but the questions was for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1110; Dec. Dig. § 289 (19).* 9 Va.-W. Va. Enc. Dig. 705.]

3. Master and Servant—(§ 289 (34)*—Injuries to Servant—Contributory Negligence.—In such case plaintiff, though knowing that he had left a car on the main line of track, was not guilty of contributory negligence per se in sitting with his foot over the end of the motor which was passing through rooms of the mine toward the heading in which the car was left, notwithstanding he knew it was being operated at a high rate of speed; it being the duty of the motorman to stop before striking the car.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1126; Dec. Dig. § 289 (34).* 9 Va.-W. Va. Enc. Dig. 725.]

Error to Circuit Court, Russel County.

Action by Henry Riddley against the Clinchfield Coal Corporation. From a judgment for defendant, plaintiff brings error. Reversed.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digest and Indexes.

Wm. H. Werth, of Tazewell, and *M. M. Long*, of St. Paul, for plaintiff in error.

Burns & Kelly, of Lebanon, *E. M. Fulton*, of Wise, and *Morrison & Robertson*, of Big Stone Gap, for defendant in error.

COMMONWEALTH et al. v. UNITED CIGARETTE MACH.
CO., Limited.

Sept. 14, 1916.

[89 S. E. 935.]

1. Taxation (§ 166*)—Intangible Property—Foreign Corporations.—A corporation chartered in England and authorized to do business in any part of the world established its principal office in the state of Virginia, wherein it manufactured the machines it sold and transacted all other business which included that of lending money. The main office was transferred from England to Virginia to escape payment of English income taxes. Code 1904, § 1103b, as amended by Act Feb. 14, 1912 (Acts 1912, c. 29) provides that corporations chartered or organized under laws of other states or countries and authorized to manufacture articles made from metal, cotton, or wood, and to mine ores or coals, may carry on in Virginia the business authorized by their charters, and shall for all purposes be deemed and treated as local corporations. The foreign corporation manufactured cigarette making machines principally of metal. Held that, despite the ordinary rule that intangible property is taxable only at the domicile of the owner, the corporation acquired a commercial domicile in the state of Virginia, and its intangible property was taxable therein.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 288, 294; Dec. Dig. § 166.* 13 Va.-W. Va. Enc. Dig. 101.]

2. Statutes (§ 121 (1)*)—Title of Act—Construction—Code 1904, § 1103b as amended by Act Feb. 14, 1912, entitled "An act to enable certain mining and manufacturing corporations of other states and countries to conduct operations in the states" confers on such corporations in the body of the act the right to carry on their business within the state, but subjects them to the state laws, which include state tax laws. Held, that the provisions of the act are germane to the title.

[Ed. Note.—For other cases, see Statute, Cent. Dig. §§ 146, 173; Dec. Dig. § 121 (1).* 12 Va.-W. Va. Enc. Dig. 761.]

3. Corporations (§ 639*)—Foreign Corporations—Statutory Provisions.—Those provisions in the act declaring that foreign corporations shall be treated as domestic corporations do not render the act invalid on the theory that it violates Const., § 50, requiring a law imposing

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.